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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of	)	MM DOCKET NO. 94-47
	)	
Benchmark Communications Corporation	)	File No. BPH-891228MT
	)	
For Construction Permit for a New	)	
FM Station on Channel 291C3 in	)	
Chatom, Alabama	)	

To: Administrative Law Judge  
Edward Luton

**MASS MEDIA BUREAU'S**  
**OPPOSITION TO PETITION TO INTERVENE**

1. On June 7, 1994, Charles Esposito, d/b/a Hap-Hazard Broadcasting ("Hap-Hazard") filed a petition to intervene. The Chief, Mass Media Bureau ("Bureau"), by his attorneys, submits the following comments in opposition.

2. In its petition to intervene, Hap-Hazard recites that it filed both an application for Chatom as well as a petition to deny the application of Benchmark Communications Corporation ("Benchmark"). It then makes reference to a pleading filed July 23, 1993, and contends that its allegations were not considered in the Hearing Designation Order, DA 94-471, released May 23, 1994 ("HDO"). However, Hap-Hazard does not suggest what, if any, information in its July pleading the HDO should have considered or what issues, if any, should have been added. Hap-Hazard concludes it should be granted party status because of its demonstrated interest in this proceeding.

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3. Section 1.223 sets forth the standards for determining whether to allow an interested entity to intervene in certain hearing proceedings. In the Bureau's view, Hap-Hazard's petition does not meet the rule's standards.


4. Initially, the Bureau notes that Hap-Hazard does not state whether it seeks to intervene under subsection (a) or (b) of the rule. Assuming, arguendo, that Hap-Hazard believes itself a "party in interest" pursuant to subsection (a), the Bureau submits that Hap-Hazard is mistaken. While it is true that the HDO considered the allegations made by Hap-Hazard in forming the issues specified in this hearing, Hap-Hazard's allegations did not add anything to what was already before the Bureau. Thus, there was nothing to be gained by making Hap-Hazard a party to this hearing proceeding. Further, the HDO denied a petition for reconsideration of the prior dismissal of Hap-Hazard's application for Chatom. Thus, Hap-Hazard is merely a former applicant. Such an entity has no right to intervene merely because it was at one time a party. Denton FM Radio, Ltd., 56 RR 2d 171, 172 (Rev. Bd. 1984), rev. denied, FCC 85-452, released August 13, 1985, quoting, Kenneth J. Crosthwait, 79 FCC 2d 191, 194 (1980).

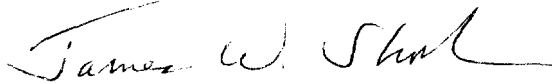
5. Likewise, Hap-Hazard fails to show that it should be allowed to intervene pursuant to subsection (b). Among other things, Section 1.223(b) provides that a petition to intervene

"must show how such petitioner's participation will assist the Commission in the determination of the issues in question ...." Hap-Hazard makes no such showing. Rather, Hap-Hazard merely concludes that its participation would be "appropriate and useful in the development of a complete record relative to the designated issues." Such a broad and undifferentiated desire to participate is insufficient to justify intervention. See Listeners' Guild, Inc., 813 F.2d 465, 470 (D.C. Cir. 1989). Moreover, Hap-Hazard's complaint regarding the HDO's failure to make reference to the supplement is untimely. Since the HDO was released pursuant to delegated authority, Hap-Hazard should have filed a request to certify with the Presiding Judge within five days of the HDO's release.

6. Accordingly, the Bureau opposes Hap-Hazard's petition to intervene.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

  
Charles E. Dziedzic  
Chief, Hearing Branch

  
James W. Shook  
Attorney  
Mass Media Bureau

Federal Communications Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554  
(202) 632-6402

June 16, 1994

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on this 16th day of June, 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Opposition to Petition to Intervene**" to:

John Raymond Meyers, President  
Benchmark Communications Corporation  
4700 SW 75th Avenue  
Miami, Florida 33155

Harry F. Cole, Esquire  
Bechtel & Cole, Chartered  
1901 L Street, N.W., Suite 250  
Washington, D.C. 20036

  
Michelle C. Mebane